

**Before the State of South Carolina
Department of Insurance**

In the Matter of:

Piedmont Insurance Company

609 North Main Street
Marion, South Carolina 29571

**Order
Imposing Administrative Supervision
And Appointing Supervisor**

The South Carolina Department of Insurance brings this matter before me upon review of the business affairs and operations of Piedmont Insurance Company (Piedmont).

It is the Department's opinion that the operation of Piedmont is such as to render the continuation of its business hazardous to the public and its policyholders. The Department further believes Piedmont has failed to comply with the insurance laws of this state.

FINDINGS OF FACT

1. Piedmont is a South Carolina domestic insurance company that holds a certificate of authority under the provisions of § 38-5-20 of the South Carolina Code. The Department granted Piedmont a license to transact business as an insurance company on February 1, 1952. Piedmont is a single-state domestic insurer. It is not publicly traded.
2. Piedmont's 2001 Annual Statement shows that it transacts business only in South Carolina and that it had 13,228 policies in force as of December 31, 2001.
3. Section 38-9-30 (1) of the South Carolina Code requires Piedmont to maintain capital of at least \$100,000 and surplus of not less than \$25,000. That Code provision allows the Director of Insurance to impose delinquency proceedings against Piedmont if its surplus falls below that minimum amount. The Code provision requires the Director to initiate delinquency proceedings if Piedmont's minimum capital becomes impaired.
4. Piedmont's unaudited June 30, 2002 Quarterly Statement shows the company's stated capital to be \$100,000 and its surplus to be \$33,972, for a total capital and surplus of \$133,972. That Quarterly Statement also shows Piedmont suffered a \$102,223 net loss for the past six months, approximately \$17,000 a month, from its operations. The Department projects that Piedmont has lost an additional \$34,000 since June 30, 2002, if the current loss trend continued. This brings Piedmont's capital and surplus below the \$125,000 required by § 38-9-30 (1) of the South Carolina Code. The Department believes Piedmont's current capital and surplus may be less than \$100,000.
5. The Department has monitored Piedmont's operations closely for some time and has been concerned about Piedmont's inability to generate net income from its operations. Since 1989,

the Department has directed J.T. Hunter, Jr., Piedmont's president and majority stockholder, to infuse over \$1,450,000 into Piedmont to support its continued losses from operation and preserve its solvency.

6. Most recently, on June 26, 2002, the Department directed Piedmont's president to infuse \$200,000 into the company by September 3, 2002 and furnish evidence of this infusion by September 9, 2002. The Department based its directive on its review of information Piedmont provided in the company's 2001 Annual Statement and subsequent Quarterly Statements, in particular, its continuing losses from operations.
7. By letter dated July 26, 2002, Piedmont's president acknowledged receipt of the Department's directive. Piedmont's president informed the Department that he would not infuse the \$200,000 in capital as directed. In a telephone conversation with Mr. Hunter on August 20, 2002, Linda G. Haralson, Chief Financial Examiner and Tim Campbell, Chief Financial Analyst of the Department informed Hunter that should he fail to make the \$200,000 infusion, they would recommend to the Director that regulatory action be instituted against Piedmont.
8. The Department met with Andrew F. Litvin, Piedmont's counsel, on September 3, 2002, and reiterated the reasons the \$200,000 infusion was necessary. The Department met with representatives of Piedmont on September 11, 2002 to further discuss this matter. However, as of close of business on September 11, 2002, Piedmont's president had not infused any additional funds. The president indicated during this meeting that he was not opposed to infusing the additional capital at some point in the future, but it would take him some time to do so. He would have to dispose of a personal asset in order to accomplish this. He was reluctant to infuse the additional funds because he was not sure what the outcome of the Department's targeted race-based examination would be.
9. A substantial portion of Piedmont's book of business is industrial and/or small face amount policies. The Department has initiated a market conduct examination of Piedmont to determine whether it has charged premiums differentiated solely by the race of the insured. This examination is ongoing. If it is determined that Piedmont did engage in race-based pricing of insurance, this exposure could represent a liability for Piedmont and any remediation could deplete the assets of the Company rendering the Company insolvent.
10. Section 38-5-120 (A) of the South Carolina Code in pertinent part states:

The director or his designee shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the following exist:

...

- (3) The insurer's condition renders its proceedings hazardous to the public or its policyholders. For the purpose of the application of this item, one or more of the following standards may be considered by the director or his designee in determining whether the continued operation of an insurer

transacting insurance business in this State is hazardous to the public or its policyholders:

(a) adverse findings reported in financial condition and market conduct examination reports;

...

(h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;

...

(o) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

11. Section 38-26-40 of the South Carolina Code in pertinent part states, "An insurer may be subject to administrative supervision by the Department if upon examination or at another time it appears in the discretion of the Director or his designee that...(1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds."

CONCLUSIONS OF LAW

After a thorough review of the matter, given Piedmont's current level of capital and surplus and status of its business operations, and the uncertainty surrounding Piedmont's exposure to race-based premium liability, I hereby conclude the following as a matter of law:

1. The South Carolina Department of Insurance has jurisdiction over Piedmont and this matter.
2. Due to Mr. Hunter's failure to make the \$200,000 capital infusion as directed by the Department, Piedmont has failed to meet the minimum capital and surplus requirements established in § 38-9-30 of the South Carolina Code for domestic insurers licensed to transact business in this state.
3. Piedmont is in a hazardous financial condition and its continued operation without this action is hazardous to the public.
4. Section 38-26-50 provides that the proceedings, hearings, notices correspondence, reports, records and other information in the possession of the director, his designee or the Department of Insurance relating to the supervision of an insurer are confidential except as provided... Section 38-26-50 also provides that the director may make public certain information if the director determines it is in the best interest of the insurer, its insureds, its creditors, or the general public. Inasmuch as Piedmont is a single state domestic insurer, without publicly traded stock, these proceeding shall be considered confidential until such other time as the director may deem disclosure appropriate.

ORDER

IT IS THEREFORE ORDERED that Piedmont be placed under the Department's supervision pursuant to the Administrative Supervision of Insurers Act. S.C. Code Ann. §§ 38-26-10, *et seq.* (2002). Pursuant to that Act and S.C. Code Ann. § 38-3-150 (2002), I hereby appoint Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Piedmont, vesting her with full authority to apply all applicable statutes and regulations.

IT IS FURTHER ORDERED that, during the period of supervision, Piedmont must not do any of the following acts *without the prior approval* of the Supervisor or her appointed representative(s) for supervision:

1. Dispose of, convey, or encumber its assets or its business in force;
2. Withdraw its bank accounts;
3. Lend its funds;
4. Invest its funds;
5. Transfer its property;
6. Incur any debt, obligation, or liability;
7. Merge or consolidate with another company;
8. Accept and/or approve any applications for insurance;
9. Approve new premiums or renew policies;
10. Enter into a new reinsurance contract or treaty;
11. Engage in any advertisement or solicitation;
12. Terminate, surrender, forfeit, convert, or lapse an insurance policy, a certificate, or a contract, except for nonpayment of premiums due;
13. Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy, certificate, or contract;
14. Make a material change in management; and
15. Increase salaries or benefits of officers or directors or the preferential payment of bonuses, dividends, or other preferential payments.

IT IS FURTHER ORDERED, effective immediately, Piedmonts' writings shall be subject to the approval of the Supervisor in accordance with S.C. Code Ann. § 38-26-60 (8), (9), and (11) (2002).

IT IS FURTHER ORDERED the Supervisor shall fix and determine all costs incident to service rendered by her or her appointed representative(s) pursuant to this Order. This amount is to be a charge against the assets and funds of Piedmont to be paid as required by S.C. Code Ann. § 38-13-70 (2002).

IT IS FURTHER ORDERED that Piedmont will remain under the administrative supervision of this Department for at least six months or until: 1) it demonstrates to the Department's satisfaction that the conditions which have made this action necessary have been abated; 2) it provides the Department a comprehensive reorganization plan demonstrating how the company can become more profitable and be a going concern; and 3) it infuses the capital necessary to meet and maintain the necessary capital and surplus requirements. In order for the Department to schedule a hearing on whether to lift the administrative supervision after six months, Piedmont must satisfy the conditions outlined above and restore its net worth to at least \$250,000, which must be maintained at all times thereafter.

IT IS FURTHER ORDERED that nothing contained within this Order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this Order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this Order should be construed to limit the duty of the Director, pursuant to S.C. Code Ann. § 38-3-110 (3) (2002), exercised either directly or through the Department, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report." Nothing contained within this Order should be construed to limit the ability of the Director to impose further action against Piedmont, including placing them into conservation, rehabilitation, liquidation, or other delinquency proceedings, during the period of administrative supervision or, as the Director believes, in his sole discretion, circumstances warrant. *See* S.C. Code Ann. § 38-26-80 (2002).

Pursuant to § 38-26-50 (D) of the South Carolina Code, a copy of this Order immediately shall be transmitted to the National Association of Insurance Commissioners as confidential regulatory information.

This Order is to be binding upon Piedmont, its agents, servants, officers, directors, employees, attorneys, and on all those persons in active concert or participation with them or who will receive actual or constructive notice of this Order by personal service or otherwise.

This Order becomes effective on the date my signature below.

A handwritten signature in black ink, appearing to read "E. N. Csiszar", with a long horizontal flourish extending to the right.

Ernst N. Csiszar
Director

16 September 2002
Columbia, South Carolina